

EXPEDITING INTERSTATE PLACEMENT CASES

BACKGROUND

The Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239) established a new assessment requirement for courts under the Court Improvement Program. In addition to the four categories of assessments previously listed in Section 438 (a)(1) of the Act, state courts that receive the basic CIP grant now must assess their role, responsibilities and effectiveness in the interstate placement of children, and must implement improvements to develop the best strategy to use to expedite these placements.

P.L. 109-239 specifies that state courts should assess the effectiveness of their laws and strategies for state courts sharing information with out-of-state courts, developing methods to obtain information and testimony from agencies and parties in other states without requiring interstate travel by the agencies and parties, and permitting parents, children, other necessary parties, and attorneys to participate in cases that involve interstate placement without requiring those parties to travel interstate.

Sharing information that is needed to expedite the interstate placement of children may be accomplished in various ways. For example, judges in different states may converse with each other in an effort to aid in the logistics or to discuss legal issues. Similarly, judges may wish to hold interstate hearings by telephone or by video conference. Doing so allows these parties to testify and present evidence without being physically present at the hearing, and similarly allows attorneys that are located in other states to file motions and question and cross-examine witnesses in these hearings. Judges should also be actively involved in requests for timely evaluation of a foster home, parent, or child located in another state. state courts may assess and implement various manners of using technology to further the goals of P.L. 109-239, as long as the practice is consistent with the relevant state and federal laws.

(BACKGROUND CONTINUED)

The Program Instructions for the basic CIP grant, ACYF-CB-PI-07-09, require that the court's interstate assessment must examine the current strengths and challenges of interstate placement throughout the state by analyzing what is allowed under current state and federal law. At a minimum, this assessment should determine whether state laws (including the state's version of the Uniform Child Custody and Jurisdiction Enforcement Act) and/or the state court rules permit the forms of interstate information sharing and participation described above. The assessment should also analyze whether there are any legal barriers that prevent timely and thorough judicial decision-making regarding interstate placement.

State courts also should study current court practices in cases involving interstate child placement through a variety of methods (e.g., surveys, individual and group interviews, administrative data, review of case files), as appropriate. This will help state courts assess the typical circumstances and how often interstate placement occurs throughout the state. The assessment should also study the overall practical barriers to timely information-sharing in judicial proceedings, and the timeliness of the proceedings to obtain and review evidence from another state, including the judicial decisions regarding approval of an interstate placement.

Finally, state courts should determine what state law, state court organization, or state court practice changes are needed to expedite interstate placement cases, based on the legal analysis and facts that the state courts have collected in this assessment. The state courts should develop the best strategy for improvements for their state courts to expedite these cases and make recommendations to implement these improvements.

Therefore to meet the above requirements, this assessment of the courts' handling of Interstate Compact for the Protection of Children (ICPC) cases in Washington courts considered four elements:

1. **Legal Analysis:** Analyze what is allowed for interstate placement under current state and federal law; identify any legal barriers to timely and thorough judicial decision-making; determine what state changes are needed in laws or court rules.

2. **Information Sharing:** Assess the effectiveness of Washington laws and strategies for sharing information with out-of-state courts; identify practical barriers to timely sharing; develop methods to obtain information and testimony from agencies and parties in other states without requiring interstate travel.

3. **Participation without Interstate Travel:** Determine whether parties (parents, children, other necessary parties, and attorneys) can participate in interstate placement cases without needing to travel between states; determine what changes in state court procedures might facilitate participation without travel.

4. **Expedite Court Handling of ICPC cases:** Study current court practices for ICPC cases, using surveys, interviews, administrative data, and review of case files to identify typical circumstances of ICPC cases and frequency of interstate placements; determine what changes are needed to expedite ICPC cases.

This report will only address areas in each element that may require more attention to improve court handling of interstate placements or to make special note of aspects encountered in meeting the ICPC requirements.

Element 1: Legal Analysis

Analyze what is allowed for interstate placement under current state and federal law; identify any legal barriers to timely and thorough judicial decision-making; determine what changes are needed in laws or court rules.

Safe and Timely Interstate Placement of Foster Children Act of 2006 (PL 109-239)

Interstate Placement Provisions

Section 3 of the law requires amendment to State IV-E Plans. Title IV-E of the Social Security Act is amended to require state plans to ensure that –

- The state has in effect procedures for the orderly and timely interstate placement of children, OR
- Procedures implemented in accordance with an interstate compact, if those procedures comply with the amendments under Section 4 of the Act.

Finding: The Interstate Compact itself (either as written or as proposed) does not currently meet the standards of the Act.

Section 4 of the Act expands upon the requirement of Section 3, above. Under Section 4, the State Plan must state that its interstate placement procedures accomplish (1) timely (within 60 days) interstate home studies; (2) timely (within 14 days) rejection of home studies from other states; and (3) no restrictions on the ability of the state to contract with private agencies for the conduct of home studies.

Finding: No statute changes required.

Note: Home studies without criminal background checks, required by the Adam Walsh Act of 2006 (PL 109-148), cannot be used to finalize placements.

Changes to Reasonable Efforts Requirements

Section 10 of the Act requires a change to the State Plan and requires reasonable efforts findings and that the Department document the practice that social workers consider out-of-state placements for the child.

Finding: No legislation required.

Note: Documentation of the consideration of out-of-state placement options is documented in the court order entered at the permanency planning hearing.

Amendments to Section 475 (Definitions) of Title IV-E

Section 8: Right of Foster Parents to be Heard

The Act requires state courts to have a court rule in effect, as part of the Court Improvement grant provisions of the Social Security Act. Sec. 438 of Title IV-B requires courts to ensure that children's care providers are notified of any proceeding to be held with respect to the child. Additionally, it requires increased court oversight of the Department's duty to notify children's caregivers of their right to be heard.

Finding: No additional legislation or court rule required.

Note: Supreme Court Rule JuCR 11.3 Notice to Foster Parents, Preadoptive Parents, Nonrelative Caregivers or Relative Caregivers, meets this requirement.

Section 12: Case Reviews

This amendment requires the Department and the court to document the fact that out-of-state placement options were considered for the child.

Finding: No statutory change is necessary.

Note: This is reflected in the ISSPs and court orders.

Court Improvement

Section 9 of the Act amends the part of Title IV that governs grants to state courts under the Court Improvement Program. The law requires courts to conduct assessments of the effectiveness of state courts in carrying out state laws that require court proceedings under Titles IV-B and IV-E.

Finding: No statutory change is necessary.

Note: The inclusion of the language within the Act may be perceived as an invitation to juvenile courts to increase contacts with child welfare agency workers and judicial officers and legal professionals. Courts have asked for testimony (written or oral) from Washington's ICPC coordinators in a number of cases, these requests are infrequent.

The Adam Walsh Child Protection and Safety Act of 2006 (PL 109-148)

This act amends a number of laws to strengthen sex offender registration and reporting, as well as to increase accessibility to registries, child pornography laws and internet safety for children.

Subtitle C of the Act does three things:

1. Requires states to conduct FBI fingerprint checks on all relative, foster, or adoptive placements;
2. Requires the US Attorney General to ensure that child welfare agencies have access to national criminal background information, through the National Crime Information Center (NCIC), for CPS investigations and for foster care placement;
3. Requires states to cooperate with each other to check the child abuse registry of any state in which a caregiver, or any adult living in the caregiver's home, has lived during the previous five years before the individual may be approved for placement of the child.

Subsection (1) of Section 152 amends Title IV-E, Sec. 471(a) and requires FBI checks in every case where a child is placed in out of home care. The specific restrictions on placement, based on certain categories of crime, only

apply to children placed in IV-E funded foster care, but the check must be done on all proposed placements.

Subsection (C) to Sec. 471 requires Children's Administration (CA) to do three things:

1. Conduct certain child abuse and neglect (CA/N) checks both in Washington and in other states (where the person looked at has lived in another state during the previous 5 years).
2. Conduct searches of the "registry" for other states who request the information.
3. Limit the disclosure of the information regarding CA/N so that it is only used for purposes of conducting suitability checks on prospective foster and adoptive parents.

Finding: No statutory change is necessary.

Note: The time required to get completed fingerprint/background checks was reported as the most common reason for delays in ICPC cases as both the sending and receiving state. Beginning in July 2008, CA will start installing Live Scan fingerprint machines in selected offices. It is hoped the use of these machines will result in fewer rejects from the FBI and more timely completions of background checks.

Element 2: Information Sharing

Assess the effectiveness of Washington laws and strategies for sharing information with out-of-state courts; identify practical barriers to timely sharing; develop methods to obtain information and testimony from agencies and parties in other states without requiring interstate travel.

Finding: Washington courts share information willingly with other states, with appropriate confidentiality protections. Generally there are no problems dealing with most other states. However, there are exceptions. This difference appears to be based on the laws in the individual states. The confidentiality laws in Arkansas were given as an example.

Element 3: Participation without Interstate Travel

Determine whether parties (parents, children, other necessary parties, and attorneys) can participate in interstate placement cases without needing to travel between states; determine what changes in state court procedures might facilitate participation without travel.

Finding: There are no restrictions for parties to participate in interstate placement cases, in Washington, without travel.

- Depending on the court, between 90% and 100% of interstate placement cases were handled without requiring travel.
- Required interstate travel is very rare and was generally only associated with additional purposes (visit with, or observation of, child).
- No judicial officer expressed dissatisfaction with the ability of parties or court staff to transact business without requiring travel.
- 100% of Washington courts allowed telephonic or written participation.
- Procedurally, scheduling to meet the availability of interested parties' to participate was the only reported problem, especially when in different time zones created court and support staff timing issues.

Element 4: Expedite court handling of ICPC cases

Study current court practices for ICPC cases, using surveys, interviews, administrative data, and review of case files to identify typical circumstances of ICPC cases and frequency of interstate placements; determine what changes are needed to expedite ICPC cases.

Findings:

1. The major change needed to expedite ICPC cases is improving the timeliness of completing fingerprint/background checks. It was the most common source of delay for Washington, both as a sending and receiving state. The criminal background check requirement was added by the enactment of the Adam Walsh Act. To address this delay Children’s Administration contracted with Integrated Biometric Technology (IBT) to provide electronic fingerprinting services across the state. This is expected to reduce the average error/reject rate from more 35%, to less than 5%. Additionally, it is expected to speed up the turn-around time for all background checks. IBT will provide 21 fingerprint centers across the state in the cities listed below. The first 12 centers identified below will be open July 1, 2008, with the remaining nine (9) sites opening between July 1 and July 18, 2008.

| | | |
|-------------------|-----------------|------------------|
| 1. Aberdeen | 8. Silverdale | 15. Bellingham |
| 2. East Wenatchee | 9. Spokane | 16. Mount Vernon |
| 3. Everett | 10. Vancouver | 17. Longview |
| 4. Olympia | 11. Walla Walla | 18. Moses Lake |
| 5. Omak | 12. Yakima | 19. Port Angeles |
| 6. Richland | 13. Tacoma | 20. Colville |
| 7. Federal Way | 14. Toppenish | 21. Pullman |

2. The act allows the receiving state to provide a preliminary home study that the sending state cannot use for placement. This meets the timeframe specified in the Act but may actually delay cases.

Supporting Data

The following types of home study requests were handled in 2007:

| Type of home study | Incoming | Outgoing | Total |
|--|-----------------|-----------------|--------------|
| • Adoption/Dependency Public Agency | 96 | 111 | 207 |
| • Adoption/Dependency Private Agency | | 2 | 2 |
| • Foster Home | 268 | 149 | 417 |
| • Group/Residential/Institution Care by DCFS | | 19 | 19 |
| • Other | | 1 | 1 |
| • Parent | 244 | 194 | 438 |
| • Relative | 407 | 575 | 982 |
| Grand Total | 1015 | 1051 | 2066 |

Finalization occurred within recommended times for 50% of the inbound cases and 56% of the outbound cases.

Generally, adoptive and foster care cases require more time than other types.

In 2007, there were 4,547 juvenile dependency filings and 1,945 termination filings in Washington courts. During this time period, the courts conducted 59,446 dependency proceedings and 6,871 termination proceedings.

Supporting Data (continued)

The following organizations actively participated in this assessment:

- King County Superior Court
- Okanogan County Superior Court
- Stevens/Pend Oreille/Ferry County, joint judicial district, Superior Court
- Klickitat/Skamania County, joint judicial district, Superior Court
- Snohomish County Superior Court
- Whatcom County Superior Court
- Pierce County Superior Court
- Clark County Superior Court
- Kitsap County Superior Court
- Children's Administration
- The Washington State Attorney General's Office